



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case No: 29534/2012

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED: YES / NO
30 MAY 2025	<div style="background-color: black; width: 100px; height: 1.2em; margin: 0 auto;"></div>
DATE	SIGNATURE

In the matter between:

JOHN RESIMATI MABAZA

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

JUDGMENT

WINDELL J

[1] On 13 May 2025, I granted an order in favour of the Plaintiff, Mr Mabaza, in the absence of the Defendant, the Road Accident Fund. The order was made in the following terms:

- (a) The Plaintiff's claim herein was timeously lodged and has not become prescribed;
- (b) The Defendant's Special Plea of extinctive prescription is dismissed with costs;
- (c) The Defendant to pay the Plaintiff's costs as between party-and-party on the High Court Scale which costs shall include the full fee ("day fee") of Plaintiff's counsel, Adv MCC de Klerk, briefed for trial on 13 May 2025, as on a Scale B. as well as his preparation for trial and preparation and drafting of heads of argument.

These are the reasons for that order.

[3] The Plaintiff's claim arises from injuries sustained in a motor vehicle accident which occurred on 15 August 2008 on the R23 Road between Balfour and Heidelberg. The Plaintiff was a passenger in a white Nissan 1400 when the driver lost control of the vehicle, resulting in a collision.

[4] The claim falls under the Road Accident Fund Act 56 of 1996, as amended by the Road Accident Fund Amendment Act 19 of 2005 ('the Act'), which came into operation on 1 August 2008.

[5] The Defendant raised a Special Plea of extinctive prescription, contending that the Plaintiff had failed to lodge his claim within the three-year period prescribed in section 23(1) of the Act, read with sections 17(1) and 24 thereof.

[6] In response, the Plaintiff filed a replication denying that his claim had prescribed. He acknowledged the three-year prescription period but pointed out that, because the final day of that period—14 August 2011—fell on a Sunday, the period was effectively extended to the next working day, 15 August 2011.

[7] The concept of prescription is well established. A debt is extinguished once the prescriptive period has lapsed, unless revived through a new undertaking. Courts may not raise prescription *mero motu*; it must be pleaded as a special plea. The party relying on prescription bears the onus of proving when it began to run.

[8] Section 23(1) of the Act states that the right to claim compensation shall prescribe three years after the cause of action arose. When calculating prescription, the civilian method is used: the first day is included and the last day excluded (FILO). In this case, that would ordinarily be 14 August 2011.

[10] Traditionally, prescription would expire even if the final day fell on a Sunday. This approach changed with the judgment in *Road Accident Fund v Masindi*,¹ where the Court held that, if the last day for bringing a claim falls on a day when court offices are closed, prescription is extended to the next working day. To do otherwise, the Court held, would create an absurd and unjust result.

[11] This principle was extended in *Gabuza v Road Accident Fund*.² There, van der Schyff AJ held that the *Masindi* principle applies not only to public holidays but also to Sundays

¹ 2018 (6) SA 481 (SCA).

² 2020 (2) SA 228 (GP).

and other dies non. The Court found that the period of prescription must be interpreted to protect the claimant's right to access the courts.

[12] It is trite that the Road Accident Fund substitutes the delictual wrongdoer and creates a statutory claim that must be lodged within three years, failing which it prescribes. However, this interpretation must align with constitutional principles and the objects of the Act, namely to provide the widest protection to those injured through the negligent driving of motor vehicles.

[13] Applying the *Masindi* and *Gabuza* principles to the present facts, the Plaintiff's claim—lodged on 15 August 2011—was not out of time. The final day for lodging the claim, 14 August 2011, fell on a Sunday. The Plaintiff was thus entitled to lodge his claim on the next court day, 15 August 2011.

[14] This approach is supported by Section 34 of the Constitution, which guarantees the right to have legal disputes determined in a fair public hearing. The interpretation advanced by the Defendant ignores this imperative and would undermine the protective purpose of the legislation.

[15] Accordingly, the Plaintiff's claim was not prescribed. The Defendant's Special Plea of extinctive prescription is thus dismissed with costs, including the qualifying and appearance fees of Plaintiff's counsel.


L. WINDELL

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 30 May 2025.

APPEARANCES

For the applicant:	Mr M.C.C. De Klerk
Instructed by:	Maluleke ZD Attorneys C/O Gert Nel Incorporated
For the respondent:	No appearance
Date of hearing:	13 May 2025
Date of judgment:	30 May 2025